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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,340	06/25/2003	David Wayne Gregg	64245	2643
27148	7590	05/05/2004	EXAMINER	
POLSINELLI SHALTON & WELTE, P.C. 700 W. 47TH STREET SUITE 1000 KANSAS CITY, MO 64112-1802			ADDIE, RAYMOND W	
		ART UNIT	PAPER NUMBER	
		3671		

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/603,340	GREGG, DAVID WAYNE
	<b>Examiner</b>	<b>Art Unit</b>
	Raymond W. Addie	3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 December 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 35-48 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-34 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 June 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/17/2003.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-34, drawn to a concrete roller and method of using, classified in class 404, subclass 93.
  - II. Claims 35-48, drawn to a method of making a concrete stamp by molding, classified in class 425, subclass 4R, 542.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made/process of using product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process can be used to make navigation buoys; while the roller for imprinting a pattern on soft concrete can be made by traditional welding of a drum to end plates and filling with a ballast material, such as sand or foam.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Jerome Smith on 4/29/2004 a provisional election was made without traverse to prosecute the invention of group I, claims 1-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 35-48 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9, 12-15, 19, 20, 22-25, 29, 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Chandler et al. # 3,910,738.

Chandler et al. discloses a stamping apparatus (10) comprising:

A roller (14) including a surface defined by a stamp (60).

A receiver portion (16-20, 22, 24) for receiving the roller and being configured for weighting the roller.

A handle (22) in communication with the receiver portion.

Wherein the apparatus includes a texture; and the stamp (60) includes a layer of material embossed with a pattern and a texture. See Fig. 3.

Further wherein the receiver portion (18) includes at least one holder (24) for holding removable weights.

In regards to Claims 31-34 Chandler et al. discloses a method for stamping concrete comprising:

Providing a stamping apparatus (10) further comprising:

A roller (14) having an outer surface defined by a stamp (60).

A receiver portion (16-20, 22, 24) configured for weighting the roller.

Weighting the receiver portion in accordance with the tightness of the concrete being worked and moving the apparatus over the concrete being worked for stamping the concrete in accordance with the stamp.

Wherein weighting the receiver portion includes adding or removing weight from the receiver portion based on the tightness of the concrete being stamped. See col. 3, Ins. 22-29.

Although Chandler et al. does not explicitly recite the method step of "wherein the weighting the receiver portion includes not removing weight and not adding weight to the receiver"; Chandler et al. positively recites "Disk shaped weights, such as disk (26)...may be placed over the rod (24) to vary the weight of the device (10)".

Hence, it is inherent that Chandler et al., intended to use the device without weights when the concrete being worked is uncured and highly plastic.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, 16, 17, 26, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandler et al. # 3,910,738 in view of Zieger et al. # 5,846,176.

Chandler et al. discloses a concrete stamping apparatus having a receiver portion capable of receiving a compaction drum (14) and having a holder (24) for supporting removable ballast weights (26), but does not disclose the use of a yoke for supporting both ends of the compaction drum.

However, Zieger et al. teaches it is desirable to provide a concrete stamping device with a yoke having oppositely disposed lateral members (18) and a cross bar (16) in communication with the lateral members.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the concrete stamping device of Chandler et al., with a yoke assembly, as taught by Zieger et al., in order to increase the stability of the concrete finishing device. See Zieger et al. col. 3, Ins. 50-65.

4. Claims 8, 18, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandler et al. '738 in view of Zieger et al. '176 as applied to claims 7, 17, 27 above, and further in view of Wynings # 6,585,451 B2.

Chandler et al. in view of Zieger et al. discloses a concrete stamping apparatus having a yoke capable of receiving a compaction roller (14) and ballast weights (26), but does not disclose providing a pair of holders for supporting a 2 groups of ganged weights. However, Wynings teaches it is desirable to provide a compaction roller (10) with a yoke assembly (16, 38) including a pair of holders, in the form of weight racks (38) for supporting a group of ganged weights (40) on each lateral end of the yoke (16).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the concrete stamping device of Chandler et al., in view of Zieger et al., with a plurality of weight holders, as taught by Wynings, in order to maximize the amount of downward force applied by the compaction roller. See Wynings Col. 3, Ins. 16-40.

5. Claims 11, 21, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandler et al. '738 in view of Zieger et al. '176 as applied to claims 10, 20, 22 above, and further in view of Brimo # 4,776,723.

Chandler et al. in view of Ziegler et al. discloses a concrete stamping device having a compacting roller (14) further having a stamp (60) formed from a material, such as plastic.

What Chandler et al. in view of Ziegler et al. do not disclose is the specific use of urethane rubber. However, Brimo teaches it is desirable to form a concrete stamping tool (50), having a stamp (52, 54, 56) from urethane rubber, in order to increase productivity of the tool. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to make the concrete stamping device from urethane rubber, in order to maximize the productivity of the tool, as reasonably suggested by Brimo, see col. 4, Ins. 15-46; col. 6, Ins. 11-21.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dunham # 1,038,732 discloses an compacting roller having ballast weights (a3). Gundersen # 4,036,126 discloses a compaction roller having ballast weights. Loveland # 1,099,185 discloses a concrete stamping tool.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2, 6-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Raymond Addie**  
Patent Examiner  
Group 3600

4/29/2004